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BOOK REVIEWS

Recht und Technik des englischen Parlamentarismus. Die Geschäftsordnung des House of Commons in ihrer geschichtlichen Entwicklung und gegenwärtigen Gestalt. Von DR. JOSEF REDLICH. (Leipzig: Duncker & Humblot. 1905. Pp.xx, 881.)

Dr. Redlich's *Recht und Technik des englischen Parlamentarismus* may be considered as the latest of a series of treatises intended for the guidance and instruction of younger parliamentary bodies. The Mother of Parliaments has been used as a model, more or less directly and to a greater or less degree, by every nation now possessing parliamentary institutions; and in undertaking the present work, Dr. Redlich has had in mind the difficulties under which legislative business is now carried through the German Reichstag. There is not, however, the same definite intention of holding up the English Parliament as a model, that inspired the writing of Hooker's account of English parliamentary procedure in the reign of Queen Elizabeth, as a guide book for the use of the Irish Parliament; or that induced Mirabeau to undertake in 1789 the translation of the rules of the House of Commons for debate and for voting for the benefit of the États Généraux; or encouraged Jefferson in the work of drawing up the Manual of Parliamentary Practice for the use of the Senate of the United States in 1801—practice founded as he acknowledged on the lines of that of the English Parliament which was the model that all had studied. Dr. Redlich's work is far too extensive and goes far too deeply into the detail of the history of parliamentary development to be of use merely as a manual, even if this were the main purpose which he had in mind when he undertook the work.

It was not with the Parliament and central government but with local governing bodies that Dr. Redlich began his studies of English institutions; and to understand his point of view it is well to turn

back to his *Local Government in England*, a translation of which by Francis W. Hirst appeared in 1903. There we find an explanation both of his sympathy with democratic progress, and also of some lingering prejudices in favor of the old order as compared with the new, which are both clearly marked in the great work on the English Parliament. When he first came to England in the early nineties, Dr. Redlich tells us, it was as a student and follower of Dr. Gneist, thoroughly imbued with the theory of English government which had been put forward with so much learning and cogency by Dr. Gneist in his *Self-Government* in 1871 and his *English Constitutional History* in 1882. The erudition and theoretic completeness of Gneist's work, coming as it did just at the time of the organization of the German Empire, colored the whole of German conceptions of English institutions, and has since caused in Germany a profound misunderstanding of English life and politics. Gneist was a Hegelian and his method one of deduction. Starting with a theory he proceeded to fit into its framework all the facts he had gathered in the course of a painstaking and most thorough research into English governmental institutions. He then proceeded to deduce from the premises he had laid down, all the future consequences of decay and ruin which he thought awaited English institutions through the fatal introduction of the ballot and of the principle of representative local government which he foresaw would replace government by the old landed gentry as appointed justices of the peace.

Starting his investigation from the basis of this theory, Dr. Redlich found himself obliged shortly to relinquish it, and to recognize in English institutions an origin and a vitality wholly different from those attributed to them by Dr. Gneist. Instead of the central government having conferred all authority on local institutions and these institutions possessing their vitality as a delegation from the state, Dr. Redlich found that it is the people who have given to Parliament its authority over the nation, and instead of the state standing over against society—the people—as the sole savior of the nation from the anarchy which the impulses and interests of society always tend to bring about, the state is created by society—by the nation with its manifold interests, and is deputed by the nation to guard and conciliate these interests. With the conception of society as the inveterate foe of the state, Gneist necessarily saw in the exten-

sion of the franchise and the institution of voting by ballot a dissolution of the power of the state; and in the anarchy which he predicted, he looked for the salvation of England only in a dictatorship upheld by the ever-increasing army of civil servants, and by the small but disciplined police force.

Dr. Redlich, although no more conscientious or erudite than Dr. Gneist, has arrived at a far truer understanding of the nature of English institutions. He sees that Dr. Gneist's predictions of ruin and disaster have been falsified; and in seeking the reason, he has entirely rejected the theory from which Dr. Gneist started, and in his two great books, *English Local Government* and the *Principles and Working of English Parliamentary Government*, Dr. Redlich endeavors to give an accurate picture of English institutions as they now exist, with the story of their development.

The difficulty of carrying on parliamentary business under the conditions prevailing in most modern parliamentary assemblies is, in Dr. Redlich's opinion, the great problem in modern political theory and practice. Dr. Redlich accepts democratic government as a fact. He does not, like Dr. Gneist, lament over it as the precursor of downfall to the state. But he does see in the election to Parliament of groups representing special interests or nationalities, the loss of the simple and dignified procedure which characterized the English Parliament in pre-reform days. In the years between 1688 and 1832, the House of Commons was an assembly of gentlemen, though as a representative body it was the choice only of the ruling classes—of a very small section of the nation. Still to this fact—the fact that Parliament definitely represented and belonged to the aristocracy—Dr. Redlich traces a feeling of responsibility for the honor and the actions of the nation which prevented any party in Parliament from acting obstructively. Parliament belonged to all its members. The rules of Parliament were their own rules, and it was a matter of honor to play the game fairly, and to uphold faithfully the rules and observances which they as members of Parliament had drawn up for their own guidance. From this point of view, Dr. Redlich considers the hundred and fifty years from 1688 to 1832 the golden age of English parliamentary usage. Debate was dignified and unhindered, and a body of rules had gradually come into existence which exactly fitted the needs of the assembly, preventing anything in the way of personal altercation or bitterness;

giving to every member an opportunity of expressing his opinions; and in every point preserving to Parliament the dignity and decorum of which every member was a jealous custodian.

The first real breach in the liberties and dignity of Parliament came with the introduction of the Irish Nationalists; and the strengthening of this party through the Reform Acts of 1867 and 1885, created a force bent on obstruction, and brought about the necessity of meeting parliamentary tactics of this kind with new rules and more drastic authority. Dr. Redlich regrets the necessity for the introduction of the closure into the English Parliament; but he thoroughly justifies it, and shows that without it, under modern conditions, it would be impossible to conduct parliamentary business. Obstruction he traces to the feeling of the Irish that they were in an assembly that did not belong to them. They had not assented to the rules, and did not feel bound to act up to their spirit. With the introduction of the Irish the old feeling of solidarity and of *esprit de corps* which had characterized the Parliament of the eighteenth century was broken up, and such a feeling can never be regained, as the later labor or socialistic groups which find their way into the House of Commons feel themselves in an antagonistic assembly, and are little likely to fall in with the old feeling of respect for the rules of the game.

Besides the general introduction and the conclusion, Dr. Redlich's work falls into twelve parts. The first book, which includes two parts, contains the history of the development of parliamentary procedure. This is divided into two periods, the first from the beginnings of Parliament in the reign of Edward III. to 1832; and the second from 1832 to 1902. The last chapter of this book is devoted to the changes and reforms made by Mr. Balfour in 1902. If the changes proposed by Sir Henry Fowler's committee on procedure are adopted, there will be a need for another chapter, for the changes now under consideration are almost revolutionary in character. They tend to bring procedure in the House of Commons into line with that of our Congress, by delegating much of the work now done in committee of the whole house to standing committees—a change which will affect the character of the British Parliament more profoundly than any change since the Reform Act of 1832.

The first two chapters of the second book, Dr. Redlich devotes to the authorities and literature of English parliamentary procedure.

The bibliography given in these chapters is full and well arranged. It includes works as recent as Morley's *Life of Gladstone*, 1903, and Sidney Low's *Governance of England*, 1904. There is a curious misprint in the name of Edward Lummis, author of the *Speaker's Chair*, which recurs several times when this book is cited as an authority; and the books given in the bibliography are of very uneven value, some being of slight account as authorities—a fact of which the reader is in no way warned, the bibliography not being critical.

Following this section comes the description of Parliament, including its meeting place; the ordering of its business; the opening of the session, and constitution of Parliament; prorogation; the description of the sittings of Parliament; the relations of the two Houses; the relations of the Crown to Parliament; parties in Parliament; the social character of the House of Commons; the speaker of the Commons and the other officers of the House; committees; motions; debates; the process of legislation; budget procedure, and private bills. In all these sections Dr. Redlich carries the story up to 1905—to the last Parliament of the recent Conservative era in England. In this respect his book supersedes Sir T. Erskine May's *Parliamentary Practice*, the first edition of which appeared in 1844, but which has several times been revised and brought up to date. Dr. Redlich's work covers much the same ground as Sir Erskine May's; but contains in addition historical sketches of the development of all procedure described, combining in this way with May's book, much of the historical work, so far as it concerns the working of the House, of Porritt's *Unreformed House of Commons*. Dr. Redlich has not concerned himself with the question of the relations of Parliament to the constituencies, or with the franchise, either historically, or as these exist at the present time—a fact which differentiates his work, from the *Unreformed House of Commons*, a large portion of which is devoted to these subjects.

England will owe a great debt of gratitude to Dr. Redlich if his monumental work is instrumental in removing the misunderstanding of English institutions in the minds of German scholars which has done much to cause, or at any rate, to perpetuate friction between the two European branches of the Teutonic race—Anglo-Saxon and German. For the sake of the United States as well as of England, it is to be hoped that Dr. Redlich's friend and English adviser, Mr. F.

W. Hirst, of the Inner Temple, who gave the world so excellent a translation of Dr. Redlich's *Local Government in England* will again undertake the work of translation and give an equally good rendering in English of the *Principles and Working of English Parliamentary Government*. If Mr. Hirst does undertake this work, there is no doubt that he will add to the value of the book by giving a full and accurate index, instead of the scanty and imperfect one in the German edition. He will also doubtless remove a number of minor blemishes in the misspelling or misrendering of English names and titles—matters perhaps of little consequence, but irritating to the reader familiar with the correct forms.

A. G. PORRITT.

Roman Private Law: Founded on the "Institutes" of Gaius and Justinian. By R. W. LEAGUE, M.A., B.C.L., Fellow of Brasenose College, Oxford. (London: Macmillan and Company; New York: The Macmillan Co. 1906. Pp. ix, 429.)

This volume is the latest contribution to the academic study of the Roman law in England. The author says in his preface that it is an attempt to meet a want which he has felt "in teaching Roman law at Oxford, viz: some book which is content to give as simply as possible the subject-matter of the Institutes of Gaius and Justinian, following, in the main, the original order of treatment." The significance of this book as an educational treatise may perhaps best be indicated by looking at it with reference to two points: first, the extent to which it supplements the expository works already accessible to the English student; and, secondly, the extent to which the highest benefit to be derived from the study of the Roman law can be obtained from such an exposition of the subject-matter of the Institutes of Gaius and Justinian.

When the author assumes that for purposes of elementary study the legal system of the Romans can best be understood by following the order of treatment adopted by their own institutional writers, he is no doubt entirely correct. It would hardly seem necessary to defend such a proposition were it not for the fact that this order of treatment is often ignored. It is of course quite competent to one who so desires, to criticise the order of the Institutes and to suggest another arrangement as being more logical than that of the Roman